

## **Item SPR06-38 Response Form**

**Title:** Traffic: Statewide Criteria for Eligibility to Attend Traffic Violator School  
(amend Cal. Rules of Court, rule 851)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

☐ **Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Friday, June 23, 2006
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,  
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action.*

Invitations to Comment SPR06-38

Title	Traffic: Statewide Criteria for Eligibility to Attend Traffic Violator School (amend Cal. Rules of Court, rule 851)
Summary	The Traffic Advisory Committee proposes two amendments to rule 851 to (1) clarify that commercial vehicle violations are not eligible for dismissal for attending traffic violator school; and (2) clarify that a defendant who is otherwise eligible to attend traffic violator school is not made ineligible by entering a plea other than guilty or by exercising his or her right to trial.
Source	Traffic Advisory Committee
Staff	Courtney Tucker, Attorney, 415-865-7611, courtney.tucker@jud.ca.gov
Discussion	<p>The proposed two amendments to rule 851 of the California Rules of Court would clarify eligibility criteria to attend traffic violator school. First, rule 851(b)(2)(A) would be amended to modify the criteria regarding negligent operator points for offenses requiring a commercial driver's license, certificate, or endorsement as specified in Vehicle Code section 12810.5(b)(2). Second, rule 851(c)(3) would be added to specify that a defendant who is otherwise eligible to attend traffic violator school is not made ineligible by pleading no contest or by exercising his or her right to trial, but a court is not required to state on the record a reason for granting or denying a request to attend traffic violator school.</p> <p>Rule 851(b) specifies which offenses are ineligible for traffic violator school as pretrial diversion by making a request to a court clerk. Several provisions within subdivision (b) address traffic violations involving commercial vehicles and drivers. Rule 851(b)(2)(A) would be amended to clarify that a clerk may not authorize traffic violator school attendance for a violation by a driver that is required to have a commercial driver's license, certificate, or endorsement for operation of a vehicle and is assessed negligent operator points as specified in Vehicle Code section 12810.5(b)(2).</p> <p>Rule 851(b)(2)(A) presently prohibits a clerk from authorizing traffic violator school attendance for specified violations that are assessed more than one and one-half points under section 12810.5(b)(2) and have been committed in circumstances requiring a commercial driver's license, certificate, or endorsement. Under the current rule, a clerk may authorize attendance for violations under section 12810.5(b)(2) that are assessed one and one-half points, which is the minimum amount under the statute's provisions. To ensure that eligibility for such offenses is considered by a judicial officer rather than a clerk, rule 851(b)(2)(A) would be amended to provide that a clerk is not authorized to grant a request to attend traffic violator school for violations assessed one and one-half or more points under Vehicle Code section 12810.5(b)(2). Thus, a clerk would not be authorized to permit traffic violator school attendance, regardless</p>

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of the point count, where a driver is operating a vehicle in circumstances under section 12810.5(b)(2) that require a commercial driver's license, certificate, or endorsement. For example, the amended rule would prohibit a clerk from granting traffic violator school attendance to a driver without a commercial driver's license who is cited for driving a noncommercial vehicle, such as a pickup truck or recreational vehicle, while hauling hazardous material, which requires a commercial driver's license endorsement. This change would improve consistency with restrictions in rule 851(b)(2)(H) and (I) which currently prohibit a clerk from authorizing traffic violator school attendance for violations in a commercial vehicle, as defined in Vehicle Code section 15210(b), and by drivers with a commercial driver's license.

The committee also proposes amendment of rule 851(c) to clarify that a plea other than guilty or a request for a trial does not make a defendant ineligible to attend traffic violator school. California courts have ruled that a court may not arbitrarily refuse to consider a request to attend traffic violator school because a defendant exercises his or her right to trial by electing to plead not guilty (*People v. Schindler* (1993) 20 Cal.App.4th 431, 433), requests traffic violator school after trial (*People v. Wozniak* (1987) 197 Cal.App.3d Supp. 43, 44), or chooses to plea no contest or offer an explanation before making a request for traffic violator school (*People v. Enochs* (1976) 62 Cal.App.3d Supp. 42, 44). To address such cases, rule 851(c) would be amended to require that the request must be considered based on the specific circumstances of the case. This standard would not permit a court to have a policy or practice that denies traffic violator school attendance because a defendant pleads other than guilty or requests a trial. The amendment would also expressly recognize that a court is not required to state on the record the reasons for granting or denying a request to attend traffic violator school. (*Schindler, supra*, 20 Cal.App.4th at p. 433.)

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Attachment

Rule 851 of the California Rules of Court would be amended, effective January 1, 2007, to read:

**Rule 851. Procedures and eligibility criteria for attending traffic violator school**

(a) **[Purpose]** The purpose of this rule is to establish uniform statewide procedures and criteria for eligibility to attend traffic violator school.

(b) **[Authority of a court clerk to grant pretrial diversion]**

(1) *(Eligible offenses)* Except as provided in subdivision (2), a court clerk is authorized to grant a request to attend traffic violator school when a defendant with a valid driver's license requests to attend an 8-hour traffic violator school as pretrial diversion under Vehicle Code sections 41501(b) and 42005 for any infraction under divisions 11 and 12 (rules of the road and equipment violations) of the Vehicle Code if the violation is reportable to the Department of Motor Vehicles.

(2) *(Ineligible offenses)* A court clerk is not authorized to grant a request to attend traffic violator school for a misdemeanor or any of the following infractions:

(A) A violation that carries a negligent operator point count of more than one point under Vehicle Code section 12810 or ~~more than one~~ and one-half points or more under Vehicle Code section 12810.5(b)(2);

(B) A violation that occurs within 18 months after the date of a previous violation and the defendant either attended or elected to attend a traffic violator school for the previous violation (Veh. Code, § 1808.7);

(C) A violation of Vehicle Code section 22406.5 (tank vehicles);

(D) A violation related to alcohol use or possession or drug use or possession;

(E) A violation on which the defendant failed to appear under Vehicle Code section 40508(a) unless the failure-to-appear charge has been adjudicated and any fine imposed has been paid;

(F) A violation on which the defendant has failed to appear under Penal Code section 1214.1 unless the civil monetary assessment has been paid;

1 (G) A speeding violation in which the speed alleged is more than 25  
2 miles over a speed limit as set forth in Chapter 7 (commencing with  
3 section 22348) of Division 11 of the Vehicle Code;  
4

5 (H) A violation that occurs in a commercial vehicle as defined in Vehicle  
6 Code section 15210(b); and  
7

8 (I) A violation by a defendant having a class A, class B, or commercial  
9 class C driver's license.  
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11 **(c) [Judicial discretion]**  
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13 (1) A judicial officer may in his or her discretion order attendance at a traffic  
14 violator school in an individual case for diversion under Vehicle Code  
15 section 41501(a), 41501(b), or 42005; sentencing; or any other purpose  
16 permitted by law. A violation by a defendant having a class A, class B, or  
17 commercial class C driver's license or that occurs in a commercial vehicle,  
18 as defined in Vehicle Code section 15210(b), is not eligible for diversion  
19 pursuant to Vehicle Code sections 41501 or 42005.  
20

21 (2) If a violation occurs within 18 months of a previous violation, a judicial  
22 officer may order a continuance and dismissal in consideration for  
23 completion of a licensed program as specified in Vehicle Code section  
24 41501(a). The program must consist of at least 12 hours of instruction as  
25 specified in section 41501(a). Pursuant to Vehicle Code section 1808.7, a  
26 dismissal for completion of the 12-hour program under this subdivision is  
27 not confidential.  
28

29 (3) A defendant who is otherwise eligible for traffic violator school is not  
30 made ineligible by entering a plea other than guilty or by exercising his or  
31 her right to trial. A traffic violator school request must be considered based  
32 on the individual circumstances of the specific case. The court is not  
33 required to state on the record a reason for granting or denying a traffic  
34 violator school request.

### Advisory Committee Comment

**Subdivision (c)(3).** Rule 851(c)(3) reflects court rulings in cases where defendants wished to plead not guilty and have the court order attendance of traffic violator school if found guilty after trial. A court has discretion to grant or not grant traffic violator school. (*People v. Schindler* (1993) 20 Cal.App.4th 431, 433; *People v. Levinson* (1984) 155 Cal.App.3d Supp. 13, 21.) However, the court may not arbitrarily refuse to consider a request for traffic violator school because a defendant pleads not guilty. (*Schindler, supra*, 20 Cal.App.4th at p. 433; *People v. Wozniak* (1987) 197 Cal.App.3d Supp. 43, 44; *People v. Enochs* (1976) 62 Cal.App.3d Supp. 42, 44.) If a judicial officer believes that a defendant's circumstances indicate that a defendant would benefit from attending school, such attendance should be authorized and should not be affected by the order in which the plea, explanation, and request for traffic violator school are presented. (*Enochs, supra*, 62 Cal.App.3d Supp. at p. 44.) A court is not required to state its reasons for granting or denying traffic violator school following a defendant's conviction for a traffic violation. (*Schindler, supra*, 20 Cal.App.4th at p. 433.)